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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/686,029

10/11/2000

Terence F. Kelly

067808-0114

5931

22922

7590

10/17/2003

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EXAMINER

MCLEHENY JR, DONALD E

ART UNIT

PAPER NUMBER

2857

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/686,029

Applicant(s)

KELLY ET AL.

Examiner

Donald E. McElheny, Jr.

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48, 50-59 and 61-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48, 50-59 and 61-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-48, 50-59, 61-67 are again rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Burfeind et al. (6,360,172 B1), as set forth in the previous Office action.
3. Claims 1-48, 50-59, 61-67 are again rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either Stevens (6,404,880 B1) or Ford et al. (6,480,830 B1) for similar reasons as set forth in the last Office action.

Response to Arguments

4. Applicant's arguments filed 09-15-03 have been fully considered but they are not persuasive.
5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (e.g., "'personalized weather forecast and weather report'") are considered fully enabling taught within the references. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicants' interpretations of the claimed limitations appear to be intended to be much more restrictive and not positively claimed to such intended extent. It also appears applicants are arguing the references so as to mislead one in their teachings, meanings and intent

in an attempt to sway one from interpreting such teachings upon the broader limitations in the claims which the references teachings clearly meet.

For instance, Burfeind et al. (6,360,172) clearly teach throughout that weather forecast information is just one of the types of data among the natural phenomenological data which may be selected and filtered out per the user's personalized profile criteria for the specific area the user is interested in receiving a report for. Those skilled in the art, including those not skilled in the art but within the general public, were well aware that weather forecast reports were generated based upon weather forecast modeling techniques either performed by meteorologists or automated computer systems. Such are inherent in the source of the supplied forecasts taught in Burfeind et al., or were so notoriously obvious to include mention of combination within the patent as to not involve the concept of invention. However instant applicants may intend "forecast", in the context as such has been added throughout amended claims it remains taught by the art of record applied. The concept is met even as can be deemed from a review as such term is found specifically discussed within applicants' written disclosure. Furthermore, applicants' distinguishing between "weather condition data" and "weather forecast" or weather report" is also found to be still met by the art of record applied. The plural types of weather data in the references includes plural cities, other plural regions, plural types of weather information one would expect in meteorology including wind, rain, cloud cover, etc. The specialized (i.e. "personalized") report supplied to the user based upon their profile adjusts the data supplied from such weather data and thus provides a subset of weather data still

inclusive, as desired by each user, of forecast and such other desired portions of weather data. For example, Burfeind et al. explicitly give the example of not only supplying a user the weather for a particular region within the user's area he/she has expressed interest, but tailored per their special interest such as sailing and giving them the wind speed conditions at the shore area where they would be interested in sailing. How much more specialized to regional area, subset of weather report parameters, particular user's interest, and personalized can that teaching be and not meet the instant applicants' claims and even submitted arguments that may intend something more "personalized"? Applicants' claims and arguments require no further attention until something of substance is submitted that is found explicitly, clearly and positively in the claims and also clearly defines over the prior art.

Applicants should keep in mind that limitations such as to specific "area", "location of interest", "geographic area", etc., where these are even claimed in the plural, and even when such are stated as "different" or vary in "resolution" they are still taught and met by the applied prior art, as the users in such prior art teachings submit profile requests for which out of plural areas forecasts and weather conditions they have available selection from, and the claims read where those may be different areas around a city (e.g. shore, in-town versus north/south/east/west), different cities (which may be those a user will be traveling through and expressed a personalized profile interest in as taught in such prior art), to various amounts and degrees (i.e. resolutions) of types of weather data (e.g. rain or shine versus how much rain versus wind and how much wind, etc.). These taught weather parameters that may be received by a user are

also "different" and "different resolution" in the specialized weather forecast and weather report data the user has expressed interest in receiving as per their submitted profile on record.

If applicants intend some more specific criteria for location of the weather forecast report data supplied to the user, such is not found in the claims. If such specificity is indeed intended for claim coverage, it would first have to be found clearly and positively stated within the claims, and be found disclosed and enabling taught within the written specification. Even so, such features would still not be found novel over the prior art of record. The applied references send their report to the users at their current location, which may be one city versus another city (i.e. geographic area) and thus include being different and different location, different size, etc. They receive tailored weather reports for their localized current locations versus different cities and/or greater region (e.g. state or country area) areas they may also select from. Even where the exact location of the user is tracked and the weather report "personalized" for that current location of the user, such was well known in the art. See Naito et al. (5,867,110) and Lemelson et al. (6,028,514), which the user's location is tracked to their exact location by a system such as the GPS, and the weather affecting only that specific region and user's location will be filtered, selected and personalized for a report to that user.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald McElheny Jr., whose telephone number is (703) 305-3894.

Fax transmissions may be directed to (703) 308-7724.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Marc Hoff, can be reached at (703) 308-1677.



DONALD E. McELHENY, JR.
PRIMARY EXAMINER